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NOTES.

LIABILITY OF VENDOR ON EXERCISE OF RIGHT OF STOPPAGE IN TRANSITU.—Though the right of stoppage *in transitu* has been recognized as a part of English law for more than two centuries, its origin is by no means certain. It has been thought by some to be a doctrine of equity;[1] others have treated it as a principle of the common law.[2] It was first recognized in 1690 in a court of equity; but the opinion of the court in that case gives no clue to the reason for the existence of the right.[3] The next case involving that right also arose in equity, and the court there based its recognition of the right of stoppage *in transitu* upon the custom of merchants;[4] and this seems to be the true

[1]Whitaker, Rights of Lien and Stoppage in Transitu, *149 *et seq.*; 1 Jones, Liens (3rd ed.) § 857 *et seq.*; see opinion of Lord Abinger in Gibson *v.* Carruthers (1841) 8 M. & W. *321, *336.

[2]See Oppenheim *v.* Russell (1802) 3 Bos. & Pul. 42.

[3]Wiseman *v.* Vandeputt (1690) 2 Vern. *203.

[4]Snee *v.* Prescott (1743) 1 Atk. *245.

explanation of its origin.[5] By the civil law which was formerly generally in force on the continent, there appears to be no analogous right; but the unpaid vendor had a right known as revindication, which permitted him to take back goods sold on credit even after they had come into the possession of the vendee.[6] The English stoppage *in transitu* is probably a modification of the right of revindication, made in the interests of freer commerce;[7] and the modern continental law has been changed to give a right similar to the English right.[8] Though first recognized in courts of equity, stoppage *in transitu* has become firmly fixed as part of the common law,[9] and courts of equity refuse to give any relief in aid of it.[10] It is important to note the anomalous character of stoppage *in transitu*; for it is difficult to reconcile it with the principles of the common law. The rule may be stated to be that the unpaid vendor, on learning of the insolvency of the vendee, has the right to prevent the goods from reaching the vendee's hands and to retake possession himself.[11] It is essential to the exercise of the right that the property in the goods shall have passed to the buyer, for there can be no stoppage *in transitu* of a man's own goods;[12] that the buyer be insolvent;[13] and that the goods at the time be in transit in the possession of a carrier.[14] The exercise of the right does not rescind the contract of sale, or revest title in the vendor,[15] but simply enables him to regain possession of the goods with all the rights incident thereto.[16]

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[5]Blackburn, Sales (Am. Ed.) *315 *et seq.*; see opinion of Lord Abinger in Gibson *v.* Carruthers, *supra*; Kindall *v.* Marshall Stevens & Co. (1883) 11 Q. B. D. 356.

[6]1 Jones, Liens (3rd ed.) § 859.

[7]Blackburn, Sales (Am. Ed.) *315.

[8]Benjamin, Sales (5th ed.) 927.

[9]Oppenheim *v.* Russell, *supra*. The rules of stoppage *in transitu* are codified in England in the Sale of Goods Act (1893) 56 and 57 Vict. c. 71, § 44 *et seq.*; and in the United States in the Uniform Sales Act, § 57 *et seq.*

[10]Goodhart *v.* Lowe (1820) 2 Jac. & W. 349.

[11]In the earlier state of the law, it was necessary in order to exercise the right of stoppage *in transitu* that the vendor obtain actual possession of the goods from the carrier. See Northey *v.* Lewis (1798) 2 Esp. 613. But all that is now required is some act or declaration countermanding delivery. Bloomingdale, Rhine & Co. *v.* Memphis etc. R. R. (1881) 74 Tenn. 616; Benjamin, Sales (5th ed.) 908.

[12]Burdick, Sales (3rd ed.) § 387; Abbott, Shipping (14th ed.) 816.

[13]Bayonne Knife Co. *v.* Umbenhauer (1894) 107 Ala. 496, 18 So. 175; see Coleman *v.* New York etc. R. R. (1913) 215 Mass. 45, 102 N. E. 92. It was held in Rogers *v.* Thomas (1849) 20 Conn. 53, that in order that there be a right of stoppage *in transitu* the insolvency of the vendee must occur after the date of the sale. But by the great weight of authority, the right is not destroyed by the fact that the vendor was insolvent at the date of the sale, unless the vendor contracted with knowledge of the insolvency. O'Brien *v.* Norris (1860) 16 Md. 122; Schwabacher *v.* Kane (1883) 13 Mo. App. 126; Fenkhausen *v.* Fellows (1889) 20 Nev. 312, 20 Pac. 886.

[14]Rummell *v.* Blanchard (1915) 216 N. Y. 348, 110 N. E. 765.

[15]See U. S. Steel Products Co. *v.* Great Western Ry. [1916] 1 A. C. 189; Diem *v.* Koblitz (1892) 49 Oh. St. 41, 29 N. E. 1124; but *cf.* Babcock *v.* Bonnell (1880) 80 N. Y. 244, 249.

[16]Benjamin, Sales (5th ed.) 926.

But the vendor's right to regain possession is subject to the carrier's lien for charges due upon the particular goods in question.[17]

The principles thus briefly stated speak only of the rights of the vendor. But is there any obligation resting upon him? That was the novel question involved in the recent case of *Booth Steamship Co. Lim.* v. *Cargo Fleet Iron Co. Lim.* (Ct. of App. 1916) 115 L. T. R. 199. In that case the defendant had sold goods which were delivered f. o. b. Liverpool for shipment to Brazil. The contract of affreightment was made between the plaintiff and the vendee. The defendant vendor, learning of the insolvency of the vendee, gave notice to the plaintiff to stop the goods in transit. The plaintiff obeyed and held the goods for the defendant; but he, for reasons of his own, refused to give any directions as to the disposition of the goods. The plaintiff sued him for damages, on the ground that the defendant was under an obligation to take the goods and discharge the carrier's lien. The court gave judgment for the plaintiff.

From a reading of the opinions rendered by the judges in the case, it is evident that they had difficulty in finding any legal principle on which to rest the liability of the defendant. Their reasoning seems to be this: under the old rule, the vendor could not assert a right to stop the goods in transit, unless he regained actual physical possession of them.[18] To do this he would of course be compelled to discharge the carrier's lien. The relaxation of the rule which permits the vendor to exercise his right of stoppage *in transitu* merely by giving notice to the carrier was not intended to put him in any better position. Exercising the right is merely a way of regaining possession; hence the vendor is under an obligation to take the goods and pay the carrier's lien. This reasoning is hardly to be commended. A common law lien, such as that which the carrier has, gives no right to bring an action to enforce it, but merely a right to retain possession until the carrier's proper demands are satisfied.[19] The defendant cannot be held for breach of contract, for the contract of affreightment was made with the vendee. Nor does there appear to be any other legal principle upon which the defendant ought to be held. It seems, therefore, that the obligation arising upon the exercise of the right of stoppage *in transitu* is just as anomalous as is the right itself. The case of *Booth Steamship Co. Lim.* v. *Cargo Fleet Iron Co. Lim. supra* is the first to recognize and enforce such an obligation. The result there reached is entirely justifiable, however; for the law gives to the unpaid vendor a valuable right, and it is reasonable to impose upon him a corresponding obligation.

LEVY ON INTEREST OF VENDOR IN EXECUTORY CONTRACT FOR SALE OF LAND.—In the recent case of *Reid* v. *Gorman* (S. D. 1916) 158 N. W. 780, a vendor had contracted to sell land to a vendee, who had paid part of the purchase price, but was in default and had abandoned the

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[17] See U. S. Steel Products Co. *v.* Great Western Ry., *supra*; Rucker *v.* Donovan (1874) 13 Kan. 251.

[18] See note 11, *supra.*

[19] 1 Jones, Liens (3rd ed.) § 1033. A remedy is often given by statute, but those statutes simply permit a sale of the property in the carrier's hands, under certain limitations, in order to satisfy the demands of the carrier. *Ibid.* § 1049 *et seq.*